

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 27 1995

In the Matter of)	MM Docket No. 95-13
)	
Amendment of Section 73.202(b))	RM-8566
Table of Allotments)	RM-8628
FM Broadcast Stations)	
(Cowden and Tower Hill, Illinois))	

DOCKET FILE COPY ORIGINAL

To: Chief, Allocations Branch

REPLY TO COUNTERPROPOSAL

Randal J. Miller, by his attorney, pursuant to Public Notice, Report No. 2066, released April 12, 1995 giving notice of the filing of a counterproposal by Kimberly B. Studstill for Cowden, Illinois, hereby submits his comments in reply to that counterproposal.^{1/} In reply thereto, the following is submitted:

I. COMPARISON OF THE COMMUNITIES OF TOWER HILL AND COWDEN

1. Randal J. Miller proposed that Channel 252A be allotted to Tower Hill, Illinois as that community's first local transmission service. Kimberly B. Studstill has now proposed that Channel 252A be allotted to Cowden, Illinois as that community's first local transmission service. A survey of available channels does not indicate that there are any alternate channels available to be allotted to either of the communities. Accordingly, a comparison must be made between Tower Hill and Cowden to deter-

^{1/} The Public Notice stated that a time period of 15 days is afforded for the filing of reply comments. Accordingly, these reply comments are timely filed.

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mine which community is better deserving of the allotment of Channel 252A as a first local transmission service.

2. Tower Hill is a census designated place located in Shelby County, Illinois. Tower Hill is incorporated as an Illinois village, and has an elected mayor and a village board of supervisors. Tower Hill has a fire protection district located within it. See generally Attached Declaration of Randal J. Miller.^{2/} Accordingly, there is no question that Tower Hill qualifies as a community to which a new FM allotment may be made. See Jacksonville, Pine Knoll Shores and Harkers Island, North Carolina, 7 FCC Rcd 2845 (1992).^{3/}

3. Because both Tower Hill and Cowden qualify as communities for the purpose of a new allotment, the Commission's choice between Tower Hill and Cowden must be guided by the allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). These priorities are:

- (1) First full-time aural service;

^{2/} A Declaration with a telecopy signature of Mr. Miller is being provided. Upon receipt of the original signature, undersigned counsel will supplement this filing at the Commission.

^{3/} Mr. Miller also states in his Declaration that water and sewer service are furnished locally to Tower Hill, the Tower Hill post office has a designated United States postal zip code, and that there are grade school and high school districts each based in Tower Hill, with locally elected school boards for each. Additionally, there are at least five churches serving Tower Hill, at least one civic club, and a bank has a branch office in Tower Hill. Further, there are a variety of businesses and commercial establishments in Tower Hill listed in Mr. Miller's Declaration. All of this is, of course, irrelevant once it is established that each proposed location is a community for the purposes of a new FM allotment.

- (2) Second full-time aural service;
 - (3) First local service; and
 - (4) Other public interest factors.
- [Co-equal weight given to priorities (2) and (3)].

An allotment at either Tower Hill or Cowden will provide first local transmission service. Further, neither community is located in an urbanized area or otherwise located so as to otherwise diminish or distinguish the preference given for first local transmission service.

4. Accordingly, the Commission's decision between Tower Hill and Cowden must be based on priority (4) -- other public interest factors. In this regard, Tower Hill has the larger population. The 1993 estimate of population for Tower Hill is 629 persons, while the 1993 estimate of population for Cowden is 576 persons. Perhaps of equal significance, the 1998 projection for Tower Hill is a population of 665 persons, while the 1998 projection for Cowden is a population of 544 persons, a decline in population.^{4/}

5. With regard to factors other than population, both communities are well served and each receives a number of aural reception services.^{5/} Ms. Studstill submits that an allotment at

^{4/} Each of these estimates is based upon the United States census, and comes from attached Market Area Profile Reports dated March 1995 prepared for both Tower Hill and for Cowden, Illinois by Demographic Applications, Inc., of Batavia, Illinois.

^{5/} Cowden undoubtedly receives more reception services than Tower Hill, as Cowden is located substantially closer to Effingham, Illinois, a community to which three stations are licensed and a new application was recently granted to Teutopolis, a suburb of Effingham. In any event, Ms. Studstill has not
(continued...)

Cowden would, at her chosen reference coordinates, purportedly provide slightly more population coverage than an allotment to Tower Hill. It is well settled, however, that in the absence of a showing that any of the increased population is unserved or underserved, a difference in population coverage cannot serve as the basis of the decision. See Obion and Tiptonville, Tennessee, 7 FCC Rcd 2644 (1992). (Differences in population served, as long as no population is unserved or underserved, is not the basis for a decision between proposals for new allotments). In Obion and Tiptonville, Tennessee, at footnote 6, it is noted that population coverage comparisons are based on assumptions of transmitter sites and technical facilities that, prior to the selection of a permittee, cannot be relied upon. The Commission can rely upon the fact, however, the proposal that will provide a first local transmission service to the larger community (Tower Hill), regardless of the selection of the transmitter site or technical facilities, will indeed provide first local transmission service to a larger population within that community. Accordingly, Ms. Studstill's claim that the community of Cowden should be preferred over Tower Hill based upon a possible slight additional number of persons served is not well founded in either Commission law or precedent.

6. Under the facts here, a selection of the community to receive the allotment should be based upon which community

5/(...continued)
submitted any information indicating that Cowden has any lack of reception services.

receiving first local transmission service has the larger population. See Stamford and Whitesboro, New York, 7 FCC Rcd 1674 (1992) (larger of two communities receives the allotment). On the basis of well settled Commission precedent, Channel 252A should be allotted to Tower Hill, Illinois, as that community has the larger population.

**II. THE MOTION TO STRIKE REPLY COMMENTS FILED
BY MS. STUDSTILL**

7. On April 10, 1995, Ms. Studstill filed an unauthorized Motion to Strike Reply Comments in this proceeding, claiming that the April 10, 1995 Reply Comments filed by Mr. Miller in this proceeding on the established reply comment date should be disregarded because Mr. Miller failed to provide demographic and other information concerning Tower Hill in either his Petition for Rule Making or his initial Comments. Ms. Studstill, in seeking to have the Commission disregard Mr. Miller's Reply Comments is wrong as a matter of Commission law and policy.

8. Ms. Studstill cites two cases, a case from 1965 and a case from 1973 for the proposition that Mr. Miller's Reply Comments should be disregarded. Had Ms. Studstill consulted current Commission law, Ms. Studstill would have discovered that in 1982, the Commission revised its procedures in channel allotment proceedings to provide for exactly the procedure followed by Mr. Miller. In Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 101 (1982), the Commission terminated the "outdated requirement" that petitioners file demograph-

ic data with their request for rule making to amend the FM table of assignments. The Commission stated that:

In situations where a conflict between proposals develops, the information necessary to resolve that conflict can be filed either in response to the Notice of Proposed Rule Making or a counterproposal.

This is exactly what Mr. Miller did. In response to Ms. Studstill's counterproposal, Mr. Miller filed, on the reply comment date, demographic information on Tower Hill. Further, on this date, the reply comment date established in response to the filing of the counterproposal of Ms. Studstill, Mr. Miller is engaging in a comparison of the communities of Tower Hill and Cowden.^{6/}

9. Not only was a submission by Mr. Miller of data on the reply comment date in support of an allotment to Tower Hill, in comparison to Cowden, procedurally correct and proper, it also serves the public interest in allowing the Commission to now make an informed comparison between the two communities. As the Commission stated in Revision of FM Assignment Policies and Procedures, 90 FCC 2d at 93, the elimination of the substantial wealth of documents filed with petitions for rule makings and comments prior to 1982 saves "the Commission and the parties from unnecessary expense".

^{6/} The Motion to Strike Reply Comments filed by Ms. Studstill appears to be procedural gamesmanship that has no place in assessing whether the public interest would be better served by an allotment of Channel 252A to Tower Hill or to Cowden.


III. CONCLUSION

10. Both Tower Hill and Cowden are deserving for first local transmission service. As Tower Hill has the larger population, Tower Hill should be preferred in the allotment of Channel 252A.

WHEREFORE, for the reasons above, Channel 252A should be allotted to Tower Hill, Illinois and a window filing period opened for the filing of new FM applications.

Respectfully submitted,

RANDAL J. MILLER

By: 
John F. Garziglia
His Attorney

Pepper & Corazzini, L.L.P.
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-0600

April 27, 1995

Declaration

I, Randal J. Miller, do hereby declare and state, that to my knowledge and belief:

1. Tower Hill, Illinois is a Census Designated Place located in Shelby County, Illinois. Tower Hill is incorporated as an Illinois village, has an elected mayor and a village board of supervisors. Tower Hill has a Fire Protection District located within it.

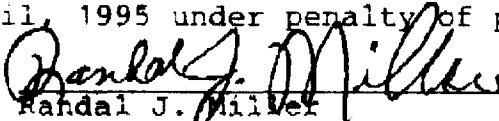
2. Water and sewer service are furnished locally to Tower Hill. The Tower Hill post office has a designated United States postal zip code of 62571. There are grade school and high school districts with schools based in Tower Hill, and locally elected school boards for each.

3. There are at least 5 churches in and serving Tower Hill--the Christian Church, the Methodist Church, Free Methodist Church, Knobs Baptist Church and Jehovah's Witnesses. There is at least one civic club, the Lions Club, which holds an annual equipment auction that is a regional attraction. The People's Bank of Pana has a branch office in Tower Hill.

4. There are a variety of businesses and commercial establishments in Tower Hill. These businesses and commercial establishments include Casey's General Store, Bruns Western Boot Store, Bruns Auction and Autos, a local trucking business, Crutcher's Auto Sales, Bud Cole's Auto Sales, Walker's TV and Stereo, a tractor/automobile repair business, a local agent of Mutual of Omaha, Lake Land F-S Inc., a laundrymat, Fred Killam Insurance, Foor's Truck Parts, and John Glick Horse Tack, among others. Natural gas, cable television, telephone and electric service are all available at Tower Hill.

5. Attached are two Market Area Profile Reports--one for Tower Hill and one for Cowden, prepared by Demographic Applications, Inc. for the Central Illinois Public Service Company in March 1995. As shown in these reports, Tower Hill has more population today and as estimated for the coming years. Tower Hill has a population of 629 persons (1993 estimate) compared with a population of 576 persons (1993 estimate) for Cowden. In 1998, it is estimated that Tower Hill will have a population of 665 persons, while Cowden will have a population of but 544 persons (Cowden has and is expected to have a continuing decline in population in the 1990s). In another significant comparison between Tower Hill and Cowden, there are more persone employed in Tower Hill (225 persons) than there are persone employed in Cowden (207 persons).

Executed this 26th day of April, 1995 under penalty of perjury.


Randal J. Miller

MDR Demographic Applications, Inc.

*Demographic / Economic
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15 East Wilson Street
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Market Area Profile Report

Cowden, IL

Prepared For: Central Illinois Public Service Company, March 1995

MDR Demographic Applications, Inc.

MARKET AREA PROFILE REPORT - Cowden, IL

	1990 CENSUS	1993 ESTIMATE	1998 PROJECTION
Total Population	599	576	544
White	99.8%	99.8%	99.8%
Black	0.0%	0.0%	0.0%
American Indian	0.0%	0.0%	0.0%
Asian	0.0%	0.0%	0.0%
Other	0.2%	0.2%	0.2%
Hispanic	0.2%	0.2%	0.2%
Total Households	239	223	213
Household Population	599	576	544
Average Household Size	2.51	2.58	2.55
Household Income			
\$ 0 - \$ 9,999	25.4%	22.0%	18.3%
\$ 10,000 - \$ 14,999	18.2%	13.0%	12.2%
\$ 15,000 - \$ 24,999	20.3%	23.3%	20.2%
\$ 25,000 - \$ 34,999	22.0%	19.7%	19.2%
\$ 35,000 - \$ 49,999	10.2%	11.7%	16.4%
\$ 50,000 - \$ 74,999	2.1%	5.4%	6.1%
\$ 75,000 - \$ 99,999	0.8%	1.8%	2.8%
\$100,000 - \$149,999	0.8%	1.8%	2.8%
\$150,000 and over	0.0%	1.3%	1.9%
Median Household Income	\$16,750	\$21,042	\$24,500
Total Population by Age			
0 - 5	8.5%	9.2%	8.8%
6 - 13	10.9%	10.8%	11.6%
14 - 17	7.5%	6.1%	5.0%
18 - 24	11.2%	12.0%	10.7%
25 - 34	12.7%	13.0%	15.1%
35 - 44	10.5%	12.7%	11.9%
45 - 54	10.0%	11.1%	11.9%
55 - 64	9.7%	10.1%	9.7%
65 - 74	10.0%	8.0%	8.1%
75 - 84	7.3%	5.7%	5.3%
85 +	1.7%	1.7%	2.4%

MDR Demographic Applications, Inc.

MARKET AREA PROFILE REPORT - Cowden, IL

	1990 CENSUS		1990 CENSUS
Total Housing Units	256	Households	
Occupied	239	With Child Under 18	85
Owner Occupied	181	With Persons 65+	84
Renter Occupied	58	With Householder 65+	78
Vacant	17		
Average Number of Rooms per Housing Unit	5.30	Marital Status - Male	
Year Structure Built		Never Married	52
1985 to 1990	11	Married	146
1980 to 1984	6	Separated	4
1970 to 1979	44	Widowed	9
1960 to 1969	28	Divorced	17
1950 to 1959	11	Total	228
1949 and Earlier	79	Marital Status - Female	
Year Moved Into Housing Unit		Never Married	36
1985 to 1990	102	Married	148
1980 to 1984	32	Separated	3
1970 to 1979	40	Widowed	33
1960 to 1969	28	Divorced	22
1959 and Earlier	29	Total	242
Home Value		Working Mothers Total	32
\$ 0 - \$ 24,999	67	With Child Under 6 Only	10
\$ 25,000 - \$ 34,999	23	With Child 6-17 Only	17
\$ 35,000 - \$ 49,999	20	With Child <6 & 6-17	5
\$ 50,000 - \$ 74,999	16	Nonworking Mothers	38
\$ 75,000 - \$ 99,999	1	School Enrollment (Age 3 +)	
\$100,000 - \$149,999	0	Preprimary	7
\$150,000 - \$199,999	1	Elementary / HS	78
\$200,000 - \$299,999	0	College	12
\$300,000 - \$399,999	0	Total	97
\$400,000 - \$499,999	0	Educational Attainment	
\$500,000 and over	0	(Age 25 and Over)	
Median Home Value	\$23,507	Less Than Grade 9	84
Median Contract Rent	\$154	Grade 9 - 12	57
Vehicles Available (HH's)		HS Graduate	162
1 Vehicle	94	Some College	47
2 Vehicles	96	Associate Degree	12
3 Vehicles	15	Bachelor's Degree	11
4 Vehicles	10	Graduate Degree	3
5 or More Vehicles	0		

MDR Demographic Applications, Inc.

MARKET AREA PROFILE REPORT - Cowden, IL

INDUSTRY	1990 CENSUS	% Of TOTAL
Agriculture, Fishing, Forestry	2	1.0
Mining	0	0.0
Construction	21	10.1
Nondurable Goods Manufacturing	35	16.9
Durable Goods Manufacturing	30	14.5
Transportation	5	2.4
Communications	7	3.4
Wholesale Trade	14	6.8
Retail Trade	30	14.5
Finance, Insurance, Real Estate	9	4.3
Business Repair Services	8	3.9
Personal Services	7	3.4
Entertainment Services	0	0.0
Health Services	10	4.8
Educational Services	12	5.8
Other Services	17	8.2
Public Administration	0	0.0

OCCUPATION

Managerial	11	5.3
Professional	14	6.8
Technical	3	1.4
Sales	24	11.6
Administrative, Clerical	20	9.7
Private Household Service	0	0.0
Protective Service	2	1.0
Other Service	35	16.9
Farming, Forestry, Fishing	2	1.0
Precision Products	25	12.1
Machine Operators	38	18.4
Transportation	10	4.8
Handlers, Cleaners	23	11.1
Total Employed	207	

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Market Area Profile Report

Tower Hill, IL

Prepared For: Central Illinois Public Service Company, March 1995

MDR Demographic Applications, Inc.

MARKET AREA PROFILE REPORT - Tower Hill, IL

	<u>1990 CENSUS</u>	<u>1993 ESTIMATE</u>	<u>1998 PROJECTION</u>
Total Population	601	629	665
White	99.0%	98.7%	98.5%
Black	0.0%	0.0%	0.0%
American Indian	0.8%	1.0%	1.2%
Asian	0.2%	0.3%	0.3%
Other	0.0%	0.0%	0.0%
Hispanic	0.0%	0.0%	0.0%
Total Households	223	238	254
Household Population	601	629	665
Average Household Size	2.70	2.64	2.62
Household Income			
\$ 0 - \$ 9,999	23.8%	17.6%	13.8%
\$ 10,000 - \$ 14,999	11.4%	13.4%	11.4%
\$ 15,000 - \$ 24,999	19.0%	19.3%	20.1%
\$ 25,000 - \$ 34,999	21.9%	17.2%	14.2%
\$ 35,000 - \$ 49,999	14.3%	15.5%	18.5%
\$ 50,000 - \$ 74,999	8.1%	13.0%	15.0%
\$ 75,000 - \$ 99,999	0.0%	2.5%	4.7%
\$100,000 - \$149,999	1.4%	1.3%	2.0%
\$150,000 and over	0.0%	0.0%	0.4%
Median Household Income	\$21,250	\$24,444	\$28,438
Total Population by Age			
0 - 5	9.0%	8.1%	7.8%
6 - 13	11.0%	10.3%	10.4%
14 - 17	6.3%	5.7%	5.0%
18 - 24	11.1%	11.3%	10.1%
25 - 34	15.1%	14.3%	14.4%
35 - 44	12.8%	13.5%	14.6%
45 - 54	12.1%	14.0%	12.9%
55 - 64	9.7%	9.5%	11.4%
65 - 74	8.0%	7.2%	6.6%
75 - 84	4.2%	4.9%	5.0%
85 +	0.7%	1.1%	1.5%

MDR Demographic Applications, Inc.

MARKET AREA PROFILE REPORT - Tower Hill, IL

	1990 CENSUS		1990 CENSUS
Total Housing Units	243	Households	
Occupied	223	With Child Under 18	92
Owner Occupied	164	With Persons 65+	60
Renter Occupied	59	With Householder 65+	58
Vacant	20		
Average Number of Rooms per Housing Unit	5.39	Marital Status - Male	
Year Structure Built		Never Married	54
1985 to 1990	6	Married	149
1980 to 1984	6	Separated	0
1970 to 1979	30	Widowed	3
1960 to 1969	16	Divorced	17
1950 to 1959	12	Total	223
1949 and Earlier	95	Marital Status - Female	
Year Moved Into Housing Unit		Never Married	45
1985 to 1990	71	Married	150
1980 to 1984	31	Separated	5
1970 to 1979	50	Widowed	35
1960 to 1969	29	Divorced	13
1959 and Earlier	36	Total	248
Home Value		Working Mothers Total	47
\$ 0 - \$ 24,999	81	With Child Under 6 Only	0
\$ 25,000 - \$ 34,999	16	With Child 6-17 Only	33
\$ 35,000 - \$ 49,999	21	With Child <6 & 6-17	14
\$ 50,000 - \$ 74,999	8	Nonworking Mothers	39
\$ 75,000 - \$ 99,999	1	School Enrollment (Age 3 +)	
\$100,000 - \$149,999	0	Preprimary	17
\$150,000 - \$199,999	0	Elementary / HS	121
\$200,000 - \$299,999	0	College	16
\$300,000 - \$399,999	0	Total	154
\$400,000 - \$499,999	0	Educational Attainment	
\$500,000 and over	1	(Age 25 and Over)	
Median Home Value	\$19,444	Less Than Grade 9	52
Median Contract Rent	\$147	Grade 9 - 12	81
Vehicles Available (HH's)		HS Graduate	174
1 Vehicle	66	Some College	27
2 Vehicles	78	Associate Degree	17
3 Vehicles	38	Bachelor's Degree	14
4 Vehicles	14	Graduate Degree	4
5 or More Vehicles	5		

MDR Demographic Applications, Inc.

MARKET AREA PROFILE REPORT - Tower Hill, IL

<u>INDUSTRY</u>	<u>1990 CENSUS</u>	<u>% Of TOTAL</u>
Agriculture, Fishing, Forestry	19	8.4
Mining	2	0.9
Construction	34	15.1
Nondurable Goods Manufacturing	35	15.6
Durable Goods Manufacturing	25	11.1
Transportation	9	4.0
Communications	5	2.2
Wholesale Trade	9	4.0
Retail Trade	23	10.2
Finance, Insurance, Real Estate	5	2.2
Business Repair Services	3	1.3
Personal Services	12	5.3
Entertainment Services	8	3.6
Health Services	16	7.1
Educational Services	7	3.1
Other Services	11	4.9
Public Administration	2	0.9

OCCUPATION

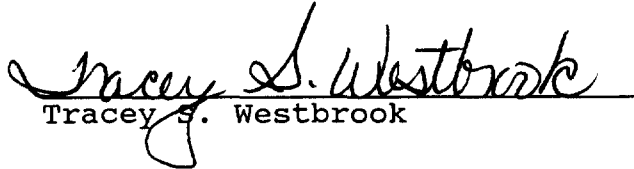
Managerial	4	1.8
Professional	12	5.3
Technical	6	2.7
Sales	14	6.2
Administrative, Clerical	14	6.2
Private Household Service	5	2.2
Protective Service	2	0.9
Other Service	33	14.7
Farming, Forestry, Fishing	17	7.6
Precision Products	40	17.8
Machine Operators	37	16.4
Transportation	18	8.0
Handlers, Cleaners	23	10.2
Total Employed	225	

CERTIFICATE OF SERVICE

I, Tracey S. Westbrook, a secretary in the law firm of Pepper & Corazzini, L.L.P., do hereby certify that true copies of the foregoing "Reply to Counterproposal" were sent this 27th day of April, 1995 by first class U.S. mail, postage prepaid, to the following:

* Ms. Nancy Walls
Allocations Branch
Mass Media Bureau
Federal Communications Commission
2000 M Street
Fifth Floor
Washington, D.C. 20554

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(Counsel to Kimberly B. Studstill)


Tracey S. Westbrook

* Via hand delivery